

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1103 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.
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STATE OF GUJARAT

Versus

BHOJA ARJAN

Appearance:

MR. MA BUKHARI, ADD PP for the appellant.
Respondents serve.d

CORAM : MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

Date of decision: 18/01/99

ORAL JUDGEMENT

PER : K.R.VYAS,J.

This acquittal appeal has been preferred by the State of Gujarat against the judgment and order of acquittal passed in Sessions Case No.94/91 by the learned Additional Sessions Judge, Junagadh. Both the

respondent-accused were tried for the offences punishable under section 20-B(1) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and section 66(b) of the Bombay Prohibition Act. It was the case of the prosecution against the respondents that on or about 5-4-91 the respondents carried out plantation of Ganja plants without any pass or permis on the land of respondent No.1 and from their possession about seven green and one dry Ganja plants weighing about 6 kgs were recovered. Charge Ex.1 accordingly was framed against both the respondents who denied the same and claimed to be tried. The learned Additional Sessions Judge, Junagadh, at the end of the trial, after considering the evidence on record, found that the prosecution has failed to prove beyond reasonable doubt the charge levelled against the respondents and, therefore, acquitted both the respondents.

Mr. Bukhari, learned Additional Public Prosecutor, took us through the evidence of P.S.I. Suresh Vyas (Ex.13) and Chhanabhai Lakhabhai (Ex.12) and submitted that in view of their evidence, the prosecution has established the case against the respondents and, therefore, the appeal deserves to be allowed. It is not out of place to mention here that in the instant case Panchas Navalsinh Ramsinh (Ex.6 and Mohmad Yusuf Alibhai (Ex.8) have not supported the prosecution and were accordingly declared hostile to the prosecution. Thus, there is no corroboration to the evidence of the police witnesses. This Court could have certainly convicted the accused had the evidence of the police witnesses been trustworthy and acceptable. However, in the instant case the Investigating Officer PSI Vyas (Ex.13) has not followed the mandatory requirement of sections 41 and 42 of the NDPS Act by not forwarding a copy of the information taken down in writing to his immediate superior officer and thus has committed breach of the mandatory provisions of section 42 of the NDPS Act. Mr. Vyas (Ex.13) admitted in terms in his evidence that he had not prepared a report or carried out raid urgently after receiving the information. Section 42 of the NDPS Act cast an obligation on the officer to take down the information in writing and to forthwith send a copy thereof to his immediate superior officer. Having not followed the mandatory requirement of the NDPS Act, we are of the view that the respondents deserve benefit of doubt.

Mr. Bukhari , however, submitted that Dy.S.P. Mr. Damor of Mangrol Division had ben to Chorwad Police

Station when he received the information about illegal plantation done by the respondents and, therefore, it was not necessary for Mr. Suresh Vyas(Ex.13) to send the report to his immediate superior officer. In the submission of Mr. Bukhari since Dy.S.P. Mr.Damor was already present in the Police Station at Chorwad when the information was received , non-sending of report is merely an irregularity and that would not come in the way of the prosecution. It is not possible for us to accept the submission of Mr. Bukhari for the simple reason that the provisions of law which are held mandatory must be complied with strictly and no exception thereto can be made out. Having gone through the evidence of P.S.I. Vyas, it does not appear that when the information was received by Mr. Vyas, Dy.S.P. Mr.Damor was present. In any case sending the report about the information is a mandatory requirement and when the same has not been followed coupled with the fact that P.S.I.Mr.Vyas had not made any entry in the station diary, we are of the view that no interference is called for especially when we are in complete agreement with the view expressed by the learned Additional Sessions Judge that the incident in question had taken place at a private place and therefore section 42 is applicable and not section 43 of the NDPS Act and, therefore, the Investigating Officer was required to follow the provisions of section 42 of the NDPS Act. Thus, there being no substance in this appeal it fails.

In the result, this appeal fails and is dismissed.

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